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**POCKET SUPPLEMENT**

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COMMISSIONERS

TITLES 55-57

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## **PUBLISHER'S NOTE**

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Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports  
Pacific Reporter, 3rd Series  
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.



**ADJOURNMENT DATES OF SESSIONS OF  
LEGISLATURE**

Year	Adjournment Date
2013 .....	April 4, 2013





# **TITLE 55**

## **PROPERTY IN GENERAL**

CHAPTER.

15. CONDOMINIUM PROPERTY ACT, § 55-1505.

### **CHAPTER 1**

## **PROPERTY AND OWNERSHIP — GENERAL PROVISIONS**

**55-101A. “Lands” defined.**

### **JUDICIAL DECISIONS**

**Cited in:** *Ida-Therm, LLC v. Bedrock Geothermal, LLC*, — Idaho —, 293 P.3d 630 (2012).

### **CHAPTER 3**

## **RIGHTS AND OBLIGATIONS OF OWNERS**

**55-308. Removal of fixtures by tenant.**

### **JUDICIAL DECISIONS**

#### **Fixtures.**

An irrigation system as a whole is not necessarily a fixture, but may be personal property. The court must assess objective in-

tent, annexation, and adaptation to determine intent. *Steel Farms, Inc. v. Croft & Reed, Inc.*, — Idaho —, 297 P.3d 222 (2012).

**55-313. Relocation of access.**

### **JUDICIAL DECISIONS**

#### **Relocation Improper.**

This section does not permit the relocation, or change of dimensions, of an easement for a driveway, where the change would clearly obstruct motor vehicle travel and injure the

owners of the easement, as they would require the construction of a new driveway across their front lawn. *Manning v. Campbell*, 152 Idaho 232, 268 P.3d 1184 (2012).

## CHAPTER 4

### PERSONAL PROPERTY

#### 55-402. Transfer and devolution of things in action.

##### JUDICIAL DECISIONS

##### Legal Malpractice Claim.

While legal malpractice claims are generally not assignable, such a claim is transferrable if it is transferred to an assignee in a commercial transaction, along

with other business assets and liabilities. *St. Luke's Magic Valley Reg'l Med. Ctr. v. Luciani* (In re Order Certifying Question to Idaho Supreme Court), — Idaho —, 293 P.3d 661 (2013).

## CHAPTER 6

### TRANSFER OF REAL PROPERTY

#### 55-604. Fee presumed to pass.

##### JUDICIAL DECISIONS

##### Mineral Reservation.

Deed's reservation of "all the oil, gas, and minerals, in, on, or under the surface" of the land was ambiguous and, therefore, was construed against the grantor. The reservation to

the grantor therefore did not include geothermal resources on the property; rather, these passed with the deed to the grantee. *Ida-Therm, LLC v. Bedrock Geothermal, LLC*, — Idaho —, 293 P.3d 630 (2012).

## CHAPTER 7

### ACKNOWLEDGMENTS

#### 55-710. Form of certificate.

##### JUDICIAL DECISIONS

**Cited in:** In re Davis, 2012 Bankr. LEXIS 197 (Bankr. D. Idaho Jan. 17, 2012).

## CHAPTER 8

### RECORDING TRANSFERS

#### 55-812. Unrecorded conveyance void against subsequent purchasers.

##### JUDICIAL DECISIONS

##### Good Faith.

The words "good faith" in this section mean actual or constructive knowledge of a prior interest or defect in title. *Benz v. D. L. Evans Bank*, 152 Idaho 215, 268 P.3d 1167 (2012).

**Cited in:** *New Phase Invs., LLC v. Jarvis*, — Idaho —, 280 P.3d 710 (2012).

## CHAPTER 9

### UNLAWFUL TRANSFERS

#### 55-913. Transfers fraudulent as to present and future creditors.

##### JUDICIAL DECISIONS

**Cited in:** In re Hall, 464 B.R. 896 (Bankr. D. Idaho 2012).

## CHAPTER 10

### HOMESTEADS

#### 55-1001. Definitions.

##### JUDICIAL DECISIONS

##### **Remainder Interest.**

Since a life estate constitutes an adequate ownership interest to establish a homestead under this section, then a fee simple remainder interest, already granted and awaiting only the eventual passing of the life tenant, is also sufficient. The homestead statutes con-

template an ownership interest in property with a corresponding monetary value that a debtor could claim as exempt; the fee simple remainder interest could be sold and thus had a monetary value. In re Thomason, — Bankr. —, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

#### 55-1003. Homestead exemption limited.

##### JUDICIAL DECISIONS

##### ANALYSIS

Bankruptcy.  
Exemption denied.

##### **Bankruptcy.**

Since a life estate constitutes an adequate ownership interest to establish a homestead under this section, then a fee simple remainder interest, already granted and awaiting only the eventual passing of the life tenant, is also sufficient. The homestead statutes may be applied to any ownership interest in property with a monetary value; because the fee simple remainder interest could be sold, it had a monetary value that a debtor could claim as exempt. In re Thomason, — Bankr. —, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

##### **Exemption Denied.**

Chapter 7 debtor who owned a trailer,

which he used as his residence while he worked in Nevada, was not allowed to exempt the value of the trailer, as his homestead, from his bankruptcy estate, because the trailer was not his principal residence. The debtor rented an apartment in Boise, Idaho, where his wife and daughter lived while he was in Nevada, he returned to Idaho while he was not working in Nevada, he voted in Idaho, paid taxes in Idaho, and licensed all his vehicles (including the trailer) in Idaho. In re Ashton, — Bankr. —, 2013 Bankr. LEXIS 321 (Bankr. D. Idaho Jan. 18, 2013).

**Cited in:** In re Van Schoiack, 2012 Bankr. LEXIS 295 (Bankr. D. Idaho Jan. 20, 2012).

## **55-1004. Automatic homestead exemption — Conditions — Declaration of homestead — Declaration of abandonment.**

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Acknowledgment.

Declared homestead.

Exemption denied.

Failure to abandon original homestead.

Residential requirement.

Termination of exemption.

#### **Acknowledgment.**

Because debtors' homestead declaration does not contain a sufficient acknowledgment, it does not satisfy the clear, statutory requirements to establish a homestead via declaration. *In re Davis*, 2012 Bankr. LEXIS 197 (Bankr. D. Idaho Jan. 17, 2012).

#### **Declared Homestead.**

Debtors' vested remainder interest, coupled with their proper filing and recording of a declaration of abandonment of their present residence and a declaration of homestead as to the home in which they had a remainder interest, was adequate to establish a valid homestead exemption under this section. There is no requirement that the debtors reside in the property in order to claim the exemption. *In re Thomason*, — Bankr. —, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

#### **Exemption Denied.**

Chapter 7 debtor who owned a trailer, which he used as his residence while he worked in Nevada, was not allowed to exempt the value of the trailer, as his homestead, from his bankruptcy estate, because the trailer was not his principal residence. The debtor rented an apartment in Boise, Idaho, where his wife and daughter lived while he was in Nevada, he returned to Idaho while he was not working in Nevada, he voted in Idaho, paid taxes in Idaho, and licensed all his vehicles (including the trailer) in Idaho. *In re Ashton*, — Bankr. —, 2013 Bankr. LEXIS 321 (Bankr. D. Idaho Jan. 18, 2013).

#### **Failure to Abandon Original Homestead.**

If an owner with a valid exemption by declaration later wishes to take advantage of the "automatic" homestead in a newly established principal residence, he must first record a declaration of abandonment as to his homestead by declaration. Otherwise, lest the public be misled, the homestead by declara-

tion continues in effect, and the second exemption is not established. *In re Davis*, 2012 Bankr. LEXIS 197 (Bankr. D. Idaho Jan. 17, 2012).

When debtors recorded their homestead declaration in 2000 for property that they owned in Shoup, they owned and occupied property in Montevue. While they recorded the homestead declaration, they did not record a declaration of abandonment for the Montevue property. Thus, they did not meet the specific technical requirements of this section and did not establish an exemption by declaration in the Shoup Property. *In re Davis*, 2012 Bankr. LEXIS 197 (Bankr. D. Idaho Jan. 17, 2012).

#### **Residential Requirement.**

Since a life estate constitutes an adequate ownership interest to establish a homestead under this section, then a fee simple remainder interest, already granted and awaiting only the eventual passing of the life tenant, is also sufficient. There is no requirement that the debtors currently reside in the property for which they are requesting the homestead exemption. *In re Thomason*, — Bankr. —, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

#### **Termination of Exemption.**

There are several ways in which an established homestead exemption may terminate. First, a property owner may file a declaration of abandonment of homestead with the county recorder where a homestead is located. Second, a presumption of abandonment arises if a property owner vacates a homestead for a continuous period of at least six months, and does not record a declaration of nonabandonment. Third, where a debtor claims a homestead exemption in property in which he is residing, Idaho's statutes limit the exemption to his principal residence. *In re Davis*, 2012 Bankr. LEXIS 197 (Bankr. D. Idaho Jan. 17, 2012).



## CHAPTER 15

### CONDOMINIUM PROPERTY ACT

#### SECTION.

#### 55-1505. Contents of declaration.

**55-1505. Contents of declaration.** — (1) The declaration shall contain the following:

- (a) A legal description of the surface of the ground within the project.
- (b) A legal description of each unit in the project, which description may consist of the identifying number, symbol or name of such unit as shown on the plat.
- (c) The percentage of ownership interest in the common area which is to be allocated to each unit for purposes of tax assessment under section 55-1514, Idaho Code, and for purposes of liability as provided by section 55-1515, Idaho Code. Such percentage shall be fixed either by taking as a basis the value of each unit in relation to the value of the property as a whole or by taking as a basis the square footage of the interior floor area of each unit in relation to the square footage of the interior floor area of all the units as a whole. For said purposes, the percentage so fixed shall be conclusive, subject only to clear and convincing proof of bad faith at the time of and in the making of such allocation or the last prior amendment thereof. If a substantial change is made to the value or size, depending upon the method used for allocation, of one (1) or more units as compared with other units, upon petition by a unit owner for reevaluation and allocation of percentage of ownership interest, the allocation shall be amended. Reallocation shall not occur more frequently than every five (5) years and, if square footage is used in determining the percentage of ownership interest, only if a substantial change is made to the size of at least one (1) unit. If the board of managers fails to act, reallocation may be accomplished by court action. If court action is necessary the prevailing party may be awarded attorney's fees and costs for unreasonable pursuit or refusal.
- (2) The declaration may but need not also contain any of the following:
  - (a) A description of the buildings in the project, stating the number of stories and basements, the number of units and the principal materials of which they are or are to be constructed.
  - (b) A statement of the location of each unit, its approximate area, number of rooms, and immediate common area to which it has access, and any other data for its proper identification.
  - (c) A description of the common areas and facilities.
  - (d) A description of any limited common areas and facilities, if any, stating to which units their use is reserved or the terms of applicable restrictions or limitations.
  - (e) The value of the property and of each unit.
  - (f) A statement of the purposes for which the building and each of the units are intended and restricted as to use.
  - (g) Provisions as to the percentage of votes by the condominium owners which shall be determinative of whether to rebuild, repair, restore, or sell

the property in the event of damage, taking, or destruction of all or part of the property.

(h) Any or all of the provisions hereinafter referred to in section 55-1507, Idaho Code, as proper provisions of bylaws.

(i) Provisions for the management of the project by any management body or bodies; for the voting majorities, quorums, notices, meeting dates, and other rules governing such body or bodies; and for recordation, from time to time, as provided for in the declaration, of certificates of identity of the persons then composing such management body or bodies, which certificates shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith.

(j) As to any management body:

(1) For the powers thereof, including power to enforce the provisions of the declaration;

(2) For maintenance by it of fire, casualty, liability, worker's compensation and other insurance and for bonding of the members of any management body;

(3) For provision by it of and payment by it for maintenance, utility, gardening and other services; for employment of personnel necessary for operation of the project, and legal and accounting services;

(4) For purchase by it of materials, supplies and the like and for maintenance and repair of the project;

(5) For payment by it of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge by it of any lien or encumbrance levies against the entire project or common areas;

(6) For payment by it for reconstruction of any portion or portions of the project damaged, taken or destroyed;

(7) For delegation by it of its powers;

(8) For entry by it or its agents into any unit when necessary in connection with any maintenance or construction for which the management body is responsible;

(9) For an irrevocable power of attorney to the management body to sell and convey the entire project for the benefit of all of the owners thereof when partition of the project may be had under section 55-1511, Idaho Code, which power shall: (i) be binding upon all of the owners, whether they expressly assume the obligations of the declaration or not; (ii) if so provided in the declaration, be exercisable by less than all, but not less than fifty percent (50%), of the voting power of the owners in the project; (iii) be exercisable only after recordation of a certificate by those who have the right to exercise such power of attorney that such power of attorney is properly exercisable under the declaration, which certificate shall be conclusive evidence of the facts recited therein in favor of any person relying thereon in good faith.

(k) Provisions for amendments of such declaration or the bylaws, if any, which amendments, if made upon the vote or consent of more than fifty percent (50%) of the voting power of the owners in the project, shall be binding upon every owner and every condominium whether the burdens

thereon are increased or decreased thereby, and whether or not the owner of each and every condominium consents thereto.

(l) Provisions for independent audit of the accounts of any management body.

(m)(1) Provisions for assessments to meet authorized expenditures of any management body, and for a method for notice and levy thereof, each condominium to be assessed separately for its share of such expenses in proportion, unless otherwise provided, to its owner's fractional interest in the common areas;

(2) For the subordination of the liens securing such assessments to other liens either generally or specifically described.

(n) Provisions for the conditions upon which partition of the project may be had pursuant to this act. Such right to partition may be conditioned upon failure of the condominium owners to elect to rebuild within a certain period, specified inadequacy of insurance proceeds, specified damage to the building, a decision of an arbitrator, or upon any other condition.

(o) Provisions for restrictions upon the severability of the component interests in the property which comprise a condominium. Such restrictions shall not be deemed conditions repugnant to the interest created nor unlawful restraints on alienation.

(p) Such document, agreement or writing pertinent to the project or its financing as may be attached to, incorporated in or made an exhibit to the declaration and/or any bylaws.

(q) Such other provisions not inconsistent with this act as the owner or owners may deem desirable in order to promote, facilitate or preserve the property or the project or the use, development or administration thereof.

(3) Subsection (2) of this section shall not be construed as a limitation upon permissible contents and provisions of a declaration.

#### **History.**

1965, ch. 225, § 5, p. 515; am. 2002, ch. 78,  
§ 1, p. 175; am. 2013, ch. 192, § 1, p. 473.

### **STATUTORY NOTES**

#### **Amendments.**

The 2013 amendment, by ch. 192, in paragraph (1)(c), inserted "either" following "fixed" near the beginning and inserted "or by taking as a basis the square footage of the interior floor area of each unit in relation to the square footage of the interior floor area of all the units as a whole" at the end of the second sentence, inserted "depending upon the method used for allocation" in the fourth sentence, and substituted "five (5) years and,

if square footage is used in determining the percentage of ownership interest, only if a substantial change is made to the size of at least one (1) unit" for "three (3) years" at the end of the fifth sentence; and substituted "Subsection (2)" for "Subpart (2)" at the beginning of subsection (3).

#### **Compiler's Notes.**

The term "this act" refers to S.L. 1965, ch. 225 which is compiled as §§ 55-1501 to 55-1527.



## **CHAPTER 25**

### **PROPERTY CONDITION DISCLOSURE ACT**

#### **55-2504. Property condition disclosure required.**

##### **JUDICIAL DECISIONS**

##### **Need for Disclosure.**

Summary judgment was properly awarded to sellers in an action by a buyer for violation of the Idaho property condition disclosure act, because the fact that the pavement running along the east side of the property was a

public right-of-way, rather than a private driveway, could not reasonably be considered a problem concerning the property that needed to be disclosed. *James v. Mercea*, 152 Idaho 914, 277 P.3d 361 (2012).

#### **55-2508. Disclosure form.**

##### **JUDICIAL DECISIONS**

##### **Need for Disclosure.**

Summary judgment was properly awarded to sellers in an action by a buyer for violation of the Idaho property condition disclosure act, because the fact that the pavement running along the east side of the property was a

public right-of-way, rather than a private driveway, could not reasonably be considered a problem concerning the property that needed to be disclosed. *James v. Mercea*, 152 Idaho 914, 277 P.3d 361 (2012).

## **CHAPTER 26**

### **SPORT SHOOTING RANGES**

#### **55-2604. Definitions.**

##### **JUDICIAL DECISIONS**

**Cited in:** *Hom v. Idaho Fish & Game Dep't (Citizens Against Range Expansion)*, — Idaho —, 289 P.3d 32 (2012).

#### **55-2605. Preemption of local authority — Noise standards — Zoning.**

##### **JUDICIAL DECISIONS**

**Cited in:** *Hom v. Idaho Fish & Game Dep't (Citizens Against Range Expansion)*, — Idaho —, 289 P.3d 32 (2012).



# TITLE 56

## PUBLIC ASSISTANCE AND WELFARE

### CHAPTER.

2. PUBLIC ASSISTANCE LAW, §§ 56-203E, 56-227,  
56-255.
9. TELECOMMUNICATIONS SERVICE ASSISTANCE,  
§§ 56-901, 56-902.

### CHAPTER.

10. DEPARTMENT OF HEALTH AND WELFARE, § 56-  
1004A.

## CHAPTER 2

### PUBLIC ASSISTANCE LAW

#### SECTION.

- 56-203E. Lottery prize set-off procedure for  
support debt.
- 56-227. Fraudulent acts — Penalty.

#### SECTION.

- 56-255. Medical assistance program — Ser-  
vices to be provided.

**56-203E. Lottery prize set-off procedure for support debt. —**  
(1) The Idaho state lottery shall immediately withhold, set-off and transfer prize moneys of a lottery prize winner to the department of health and welfare upon notification and verification from the department of health and welfare to collect a support delinquency. The set-off or withholding of a prize shall be final only after the following conditions have been met:

(a) A delinquency exists, which shall be defined as any unpaid child or spousal support including public assistance, pursuant to a court order from this state or a court or administrative order of another state.

(b) The department of health and welfare, bureau of child support enforcement, shall forward to the Idaho state lottery the full name and social security number of the obligor and the amount of the delinquent child support. The Idaho state lottery shall notify the department of health and welfare of the amount of the prize withheld to satisfy the child support delinquency and the prize winner's address.

(c) The department of health and welfare shall provide notice of the proposed set-off by registered or certified mail to the prize winner at the address provided to the Idaho state lottery. Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday or state holidays as the 14th day) the prize winner may file a protest in writing requesting a hearing before the department of health and welfare. The hearing shall be held within thirty-five (35) days from the date of the mailing of the original notice. No issues at that hearing may be considered that have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or by mail to the prize winner within ten (10) days of the hearing.

(d) After the decision of the department of health and welfare is issued, or if the prize winner has failed to file a timely protest of the claim, the set-off procedure shall become final.

(2) The proceeds from the set-off shall be credited to an account desig-

nated by the department of health and welfare, and notice shall be given to the appropriate clerk of the district court.

#### History.

I.C., § 56-203E, as added by 1990, ch. 153,  
§ 2, p. 338; am. 2013, ch. 250, § 1, p. 608.

### STATUTORY NOTES

#### Amendments.

The 2013 amendment, by ch. 250, in the introductory paragraph of subsection (1), substituted “immediately withhold, set-off and transfer prize moneys” for “withhold, and set-off a prize” and inserted “to the department of health and welfare” and “and verification” in

the first sentence, and substituted “final” for “completed” in the second sentence; and substituted “The department of health and welfare shall provide notice of the proposed set-off” for “Notice of the proposed set-off shall be sent” at the beginning of paragraph (1)(c).

### 56-218. Recovery of certain medical assistance.

### JUDICIAL DECISIONS

#### Recovery from Spouse's Estate.

In an action in which the Idaho department of health & welfare sought to recover Medicaid benefits paid to a decedent's spouse, state law was not preempted by 42 U.S.C.S. § 1396p, because, based on the ambiguously inclusive nature of an “estate” as defined in 42 U.S.C.S. § 1396p(b)(4)(B) and the definition of “assets” in 42 U.S.C.S. § 1396p(h)(1), the

department could recover assets from both spouses' estates under subsection (1) of this section, including a home which was previously the community property of the spouse, although it was not her property at the time of her death. *Idaho Dep't of Health v. McCormick (In re Estate of George)*, — Idaho —, 283 P.3d 785 (2012).

**56-227. Fraudulent acts — Penalty.** — (1) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willfully false statement or representation, material omission, or fraudulent devices, public assistance to which he is not entitled, or in an amount greater than that to which he is justly entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or attempted to be so obtained.

(2) Whoever sells, conveys, mortgages or otherwise disposes of his property, real or personal, or conceals his income or resources, for the purpose of rendering him eligible for public assistance, theretofore or thereafter applied for, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or so attempted to be obtained. Provided however, this provision shall not be construed to be more restrictive than federal or state provisions regarding the transfer of property for public assistance.

(3) Every person who knowingly aids or abets any person in selling, conveying, mortgaging or otherwise disposing of his property, real or personal, or in concealing his income or resources for the purpose of rendering him eligible for public assistance, theretofore or thereafter applied for and received, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or attempted

to be obtained. Provided however, this provision shall not apply to any person who communicates information or renders advice to another regarding federal or state provisions regarding the transfer of property for public assistance.

(4) For the purpose of this section public assistance shall include the specific categories of assistance for which provision is made in any federal or state law existing or hereafter enacted by the congress of the United States or the state of Idaho by which payments are made from the federal government to the state in aid or in respect to payment by the state for welfare purposes to any category of needy person and any other program of assistance for which provision for federal or state funds for aid may from time to time be made.

(5) The state department of health and welfare shall establish and operate a fraud control program to investigate suspected fraud relating to applications for public assistance benefits, and public assistance benefits received by individuals or entities. Such activities shall be those which do not fall under the authority of the medicaid fraud control unit as provided in section 56-226, Idaho Code. The department shall establish a procedure to coordinate information with prosecuting attorneys to prosecute offenders who commit fraudulent acts pursuant to this chapter.

**History.**

1941, ch. 181, § 24-c, as added by 1943, ch. 119, § 2, p. 228; am. 1974, ch. 233, § 9, p. 1590; am. 1981, ch. 194, § 1, p. 343; am. 1988,

ch. 246, § 1, p. 480; am. 2002, ch. 369, § 2, p. 1038; am. 2007, ch. 341, § 5, p. 1000; am. 2008, ch. 188, § 1, p. 592; am. 2013, ch. 143, § 1, p. 340.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 143, deleted “relief or federal aid assistance” following “public assistance” near the middle of subsection (1); in subsection (2), substituted “eligible for public assistance” for “eligible for any form of assistance” and inserted “public” following

“value of the” in the first sentence and added the last sentence; and, in subsection (3), substituted “public assistance” for “any form of public assistance or relief” and deleted “or relief” preceding “so obtained” in the first sentence and added the last sentence.

**56-254. Eligibility for medical assistance.**

**RESEARCH REFERENCES**

**A.L.R. —** State criminal prosecution against medical practitioner for fraud in connection with claims under medicaid, medi-

care, or similar welfare program for providing medical services. 79 A.L.R.6th 125.

**56-255. Medical assistance program — Services to be provided. —**

(1) The department may make payments for the following services furnished by providers to participants who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be reimbursed only when medically necessary within the appropriations provided by law and in accordance with federal law and regulation, Idaho law and department rule. Notwithstanding any other provision of this chapter, medical assistance includes the following benefits specific to the



eligibility categories established in section 56-254(1), (2) and (3), Idaho Code, as well as a list of benefits to which all Idaho medicaid participants are entitled, defined in subsection (5) of this section.

(2) Specific health benefits and limitations for low-income children and working-age adults with no special health needs include:

- (a) All services described in subsection (5) of this section;
- (b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found; and
- (c) Cost-sharing required of participants. Participants in the low-income children and working-age adult group are subject to the following premium payments, as stated in department rules:
  - (i) Participants with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal poverty guideline are not required to pay premiums; and
  - (ii) Participants with family incomes above one hundred thirty-three percent (133%) of the federal poverty guideline will be required to pay premiums in accordance with department rule.

(3) Specific health benefits for persons with disabilities or special health needs include:

- (a) All services described in subsection (5) of this section;
- (b) Early and periodic screening, diagnosis and treatment services for individuals under age twenty-one (21) years, and treatment of conditions found;
- (c) Case management services as defined in accordance with section 1905(a)(19) or section 1915(g) of the social security act; and
- (d) Long-term care services, including:
  - (i) Nursing facility services, other than services in an institution for mental diseases, subject to participant cost-sharing;
  - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require nursing facility level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule; and
  - (iii) Personal care services in a participant's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse;
- (e) Services for persons with developmental disabilities, including:
  - (i) Intermediate care facility services, other than such services in an institution for mental diseases, for persons determined in accordance with section 1902(a)(31) of the social security act to be in need of such care, including such services in a public institution, or distinct part thereof, for persons with intellectual disabilities or persons with related conditions;
  - (ii) Home-based and community-based services, subject to federal approval, provided to individuals who require an intermediate care

facility for people with intellectual disabilities (ICF/ID) level of care who, without home-based and community-based services, would require institutionalization. These services will include community supports, including options for self-determination or family-directed, which will enable individuals to have greater freedom to manage their own care within the determined budget as defined by department rule. The department shall respond to requests for budget modifications only when health and safety issues are identified and meet the criteria as defined in department rule; and

(iii) Developmental disability services for children and adults shall be available based on need through state plan services or waiver services as described in department rule. The department shall develop a blended rate covering both individual and group developmental therapy services;

(f) Home health services, including:

(i) Intermittent or part-time nursing services provided by a home health agency or by a registered nurse when no home health agency exists in the area;

(ii) Home health aide services provided by a home health agency; and

(iii) Physical therapy, occupational therapy or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility;

(g) Hospice care in accordance with section 1905(o) of the social security act;

(h) Specialized medical equipment and supplies;

(i) Medicare cost-sharing, including:

(i) Medicare cost-sharing for qualified medicare beneficiaries described in section 1905(p) of the social security act;

(ii) Medicare part A premiums for qualified disabled and working individuals described in section 1902(a)(10)(E)(ii) of the social security act;

(iii) Medicare part B premiums for specified low-income medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the social security act; and

(iv) Medicare part B premiums for qualifying individuals described in section 1902(a)(10)(E)(iv) and subject to section 1933 of the social security act; and

(j) Nonemergency medical transportation.

(4) Specific health benefits for persons over twenty-one (21) years of age who have medicare and medicaid coverage include:

(a) All services described in subsection (5) of this section, other than if provided under the federal medicare program;

(b) All services described in subsection (3) of this section, other than if provided under the federal medicare program;

(c) Other services that supplement medicare coverage; and

(d) Nonemergency medical transportation.

(5) Benefits for all medicaid participants, unless specifically limited in subsection (2), (3) or (4) of this section, include the following:

(a) Health care coverage including, but not limited to, basic inpatient and outpatient medical services, and including:

- (i) Physicians' services, whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere;
- (ii) Services provided by a physician or other licensed practitioner to prevent disease, disability and other health conditions or their progressions, to prolong life, or to promote physical or mental health; and
- (iii) Hospital care, including:

- 1. Inpatient hospital services other than those services provided in an institution for mental diseases;
- 2. Outpatient hospital services; and
- 3. Emergency hospital services;

(iv) Laboratory and x-ray services;

(v) Prescribed drugs;

(vi) Family planning services and supplies for individuals of child-bearing age;

(vii) Certified pediatric or family nurse practitioners' services;

(viii) Emergency medical transportation;

(ix) Behavioral health services, including:

- 1. Outpatient behavioral health services that are appropriate, delivered by providers that meet national accreditation standards and may include community-based rehabilitation services and case management; and
- 2. Inpatient psychiatric facility services whether in a hospital, or for persons under the age of twenty-two (22) years in a freestanding psychiatric facility as permitted by federal law;

(x) Medical supplies, equipment, and appliances suitable for use in the home;

(xi) Physical therapy and speech therapies combined to align with the annual medicare caps; and

(xii) Occupational therapy to align with the annual medicare cap;

(b) Primary care medical homes;

(c) Dental services. Children shall have access to prevention, diagnosis and treatment services as defined in federal law. Adult coverage shall be limited to medically necessary oral surgery and palliative services and associated diagnostic services. Select covered benefits include: exams, radiographs, periodontal, oral and maxillofacial surgery and adjunctive general services as defined in department rule. Pregnant women, participants on the aged and disabled waiver and the developmental disability waiver shall have access to dental services that reflect evidence-based practice;

(d) Medical care and any other type of remedial care recognized under Idaho law, furnished by licensed practitioners within the scope of their practice as defined by Idaho law, including:

(i) Podiatrists' services based on chronic care criteria as defined in department rule;

(ii) Optometrists' services based on chronic care criteria as defined in department rule;



- (iii) Chiropractors' services shall be limited to six (6) visits per year; and
- (iv) Other practitioners' services, in accordance with department rules;
- (e) Services for individuals with speech, hearing and language disorders as defined in department rule;
- (f) Eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;
- (g) Services provided by essential providers, including:
  - (i) Rural health clinic services and other ambulatory services furnished by a rural health clinic in accordance with section 1905(l)(1) of the social security act;
  - (ii) Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with section 1905(l)(2) of the social security act;
  - (iii) Indian health services;
  - (iv) District health departments; and
  - (v) The family medicine residency of Idaho and the Idaho state university family medicine residency; and
- (h) Physician, hospital or other services deemed experimental are excluded from coverage. The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost-effective as traditional, standard treatments.

**History.**

I.C., § 56-255, as added by 2006, ch. 278, § 1, p. 853; am. 2007, ch. 200, § 5, p. 610; am. 2009, ch. 34, § 4, p. 95; am. 2010, ch. 235,

§ 46, p. 542; am. 2011, ch. 164, § 9, p. 463; am. 2012, ch. 190, § 1, p. 510; am. 2013, ch. 25, § 1, p. 46.

**STATUTORY NOTES****Amendments.**

The 2013 amendment, by ch. 25, in subsection (3), deleted former paragraph (d), which read: "Mental health services delivered by providers that meet national accreditation standards, including:

"(i) Inpatient psychiatric facility services whether in a hospital, or for persons under age twenty-two (22) years in a freestanding psychiatric facility, as permitted by federal law, in excess of those limits in department rules on inpatient psychiatric facility services provided under subsection (5) of this section;

"(ii) Outpatient mental health services in excess of those limits in department rules on outpatient mental health services provided under subsection (5) of this section; and

"(iii) Psychosocial rehabilitation for reduction of mental disability for children under

the age of eighteen (18) years with a serious emotional disturbance (SED). Individuals age eighteen (18) years to age twenty-one (21) years with severe and persistent mental illness shall have access to benefits up to a weekly cap of five (5) hours while adults over the age of twenty-one (21) years with severe and persistent mental illness shall have access to benefits up to a weekly cap of four (4) hours",

and redesignated former paragraphs (e) to (k) as present paragraphs (d) through (j); and rewrote paragraph (5)(a)(ix), which formerly read: "Mental health services, including:

"1. Outpatient mental health services that are appropriate, within limits stated in department rules; and

"2. Inpatient psychiatric facility services within limits stated in department rules."

56-265. Provider payment.

RESEARCH REFERENCES

A.L.R. — State criminal prosecution against medical practitioner for fraud in connection with claims under medicaid, medical care, or similar welfare program for providing medical services. 79 A.L.R.6th 125.

CHAPTER 9

TELECOMMUNICATIONS SERVICE ASSISTANCE

SECTION.	Applicable services — Amount — Application.
56-901. Telecommunications service assistance program — Definitions.	
56-902. Assistance rate discount — Form —	

**56-901. Telecommunications service assistance program — Definitions.** — (1) A telecommunications service assistance program is hereby established within the department of health and welfare to provide eligible recipients with a reduction in costs of telecommunications services to promote universal service. The program shall be administered by the department of health and welfare in accordance with the provisions of this chapter and rules and regulations promulgated in compliance with chapter 52, title 67, Idaho Code, to administer the program. The telecommunications service assistance program adopted shall grant limited federal “lifeline” contributions to Idaho’s low-income customers.

(2) For the purposes of this chapter, a “telecommunications carrier” means a telephone corporation providing telecommunication services for compensation within this state, and shall include municipal, cooperative, or mutual nonprofit telephone companies, and telecommunication corporations providing wireless, cellular, personal communications services and mobile radio services for compensation.

**History.** § 1, p. 686; am. 1998, ch. 37, § 8, p. 157; am. I.C., § 56-901, as added by 1987, ch. 328, 2013, ch. 186, § 1, p. 446.

STATUTORY NOTES

**Amendments.** The 2013 amendment, by ch. 186, substituted “shall grant limited federal ‘lifeline’ contributions” for “shall maximize federal ‘lifeline’ and ‘link up’ contributions” in the last sentence in subsection (1).

**56-902. Assistance rate discount — Form — Applicable services — Amount — Application.** — (1) Telecommunication carriers providing residential basic local service shall provide assistance in the form of a monthly discount to eligible subscribers of residential basic local service of two dollars and fifty cents (\$2.50). In no case will the discount exceed the rate charged for the grade of residential basic local service subscribed to by each eligible individual. The Idaho telecommunications service assistance plan shall only be used to provide for a single line at the subscriber household.



(2) The providers of residential basic local service and the Idaho department of health and welfare shall comply with all requirements expressly provided by federal order, regulation and statute for eligible subscribers to qualify for the federal “lifeline” telephone assistance program. In accordance with federal law, the Idaho public utilities commission may grant waivers to carriers of residential basic local service from providing certain services to eligible subscribers.

**History.**

I.C., § 56-902, as added by 1987, ch. 328,

§ 1, p. 686; am. 1998, ch. 37, § 9, p. 157; am. 2013, ch. 186, § 2, p. 446.

**STATUTORY NOTES**

**Amendments.**

The 2013 amendment, by ch. 186, in subsection (1), substituted “two dollars and fifty cents (\$2.50)” for “three dollars and fifty cents (\$3.50) or an amount authorized by the federal communication commission whichever is greater” in the first sentence and substituted “a single line at the subscriber household” for

“a single residence line at the principal residence of the eligible subscriber” in the last sentence; deleted “and ‘link-up’” preceding “telephone assistance program” in the first sentence in subsection (2); and substituted “basic local service” for “basic local exchange service” throughout the section.

**CHAPTER 10**

**DEPARTMENT OF HEALTH AND WELFARE**

**SECTION.**

56-1004A. Criminal history and background checks.

**56-1002. Department of health and welfare — Creation — Administrative regions.**

**JUDICIAL DECISIONS**

**Elimination of Directors.**

Under subsection (3), the director of Idaho department of health and welfare had authority to eliminate four regional directors; the

statute did not state that the consolidation of the regional director positions contravened the law. *Arambarri v. Armstrong*, 152 Idaho 734, 274 P.3d 1249 (2012).

**56-1004A. Criminal history and background checks.** — (1) To assist in the protection of children and vulnerable adults, the legislature hereby authorizes the department of health and welfare to conduct criminal history and background checks of individuals who provide care or services to vulnerable adults or children and are identified in rule as being required to have a criminal history and background check.

(2) To further assist in the protection of vulnerable adults, the department of health and welfare may:

- (a) Conduct criminal history and background checks of those seeking guardianship or conservatorship and those who reside in an incapacitated person’s proposed residence;
- (b) Make the findings of such criminal history and background checks available to visitors, guardians ad litem and evaluation committees

appointed pursuant to chapter 5, title 15 or chapter 4, title 66, Idaho Code; and

(c) Promulgate such rules as are necessary to carry out the provisions of this section.

The provisions of subsection (6) of this section shall not apply to criminal history and background checks conducted pursuant to this subsection.

(3) Criminal history and background checks will be conducted by the department of health and welfare when:

(a) Required or ordered by the court pursuant to chapter 5, title 15 or chapter 4, title 66, Idaho Code;

(b) Requested by those required to undergo such checks; and

(c) Paid for in full by those required to undergo such checks.

(4) The criminal history and background check will be a fingerprint-based check of state and national records and may include information from the following:

(a) Statewide criminal identification bureau;

(b) Federal bureau of investigation (FBI);

(c) National crime information center;

(d) Statewide sex offender registry;

(e) Idaho transportation department driving records;

(f) Adult and child protection registries;

(g) Nurse aide registry; and

(h) Department of health and human services office of the inspector general list of excluded individuals and entities.

(5) The department of health and welfare shall promulgate rules to further define those individuals who are required to have a criminal history and background check and the effective date. Each individual shall complete an application, which includes a notarized signature, on forms provided by the department. The completed application authorizes the department to obtain and release information in accordance with state and federal law. The applicant must disclose all information requested, including information on past convictions, driver's license revocations, and known adult or child protection findings. Once an application has been completed, the employer, at its discretion, may allow the individual to provide care or services prior to the individual completing fingerprinting and pending completion of the criminal history and background check by the department. The department shall promulgate rules defining the time frame for submitting the application. Under no circumstances may the individual be allowed to provide care or services where the employer has reviewed the completed application and the individual has disclosed a designated crime as set forth in rule.

(6) The department shall review the information received from the criminal history and background check and determine whether the applicant has a criminal or other relevant record that would disqualify the individual. The department shall determine which crimes disqualify the applicant and for what period of time according to promulgated rules. The process for the check and the issuance of a clearance or denial is set forth in department rules. The applicant shall be provided an opportunity for a formal review of a denial. The department shall communicate clearance or denial to the applicant and the applicant's employer.

(7) Applicants are responsible for the cost of the criminal history and background check except where otherwise provided by department rules.

(8) The department, or an employer of an applicant, who acts in reasonable reliance on the results of the criminal history and background check in making an employment decision, is immune from liability for that decision when it is based on such results.

(9) The department, its officers and employees are immune from liability for the consequences of including or excluding classes of individuals in the criminal history and background check process.

(10) Clearance through the criminal history and background check process is not a determination of suitability for employment.

(11) Effective until September 30, 2007, or when federal funding is no longer available, the legislature hereby authorizes the department of health and welfare to participate in a federal pilot project to conduct criminal history and background checks of providers, employees and contractors who have access to patients in long-term care settings. Long-term care facilities or providers include nursing facilities, institutional care facilities for people with intellectual disabilities, residential or assisted living facilities, long-term care hospitals or hospitals with swing beds, and home health and hospice providers. The criminal history and background checks for the long-term care providers, employees and contractors will be funded through the federal grant at no cost to the long-term care providers, employees or contractors until September 30, 2007, or the federal funding is no longer available.

**History.**

I.C., § 56-1004A, as added by 2005, ch. 312,  
§ 1, p. 970; am. 2006, ch. 281, § 1, p. 864; am.

2010, ch. 235, § 54, p. 542; am. 2013, ch. 262,  
§ 4, p. 640.

**STATUTORY NOTES****Amendments.**

The 2013 amendment, by ch. 262, inserted present subsections (2) and (3), and redesignated the subsequent subsections accordingly; and inserted "criminal history and" preceding "background check" in present subsections (5) and (7).

**Compiler's Notes.**

For national crime information center, see <http://www.fas.org/irp/agency/doj/fbilis/ncic.htm>.



**TITLE 57**  
**PUBLIC FUNDS IN GENERAL**  
**CHAPTER 12**  
**TAYLOR GRAZING ACT FUNDS**

**57-1201. Distribution of funds to counties by state treasurer.**

**RESEARCH REFERENCES**

**A.L.R.** — Construction and application of Taylor Grazing Act (43 U.S.C. §§ 315 et seq.) and regulations promulgated thereunder. 71 A.L.R. Fed. 2d 197.







